

*Feldman  
P.L.I.*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-190286

DATE: January 6, 1978

MATTER OF: P. W. Parker, Inc.

**DIGEST:**

Bid which did not include bid bond was properly rejected despite bidder's assertion that bond was included with its bid package and was in Government's hands prior to bid opening. In absence of independent evidence to establish that bond was submitted to Government prior to bid opening, bid may not be considered responsive.

P. W. Parker, Inc. (Parker) protests the rejection of its bid as nonresponsive for failure to submit a bid bond under Invitation for Bids (IFB) LGC-7-0226B1 for expansion of the utility building at Dulles International Airport issued by the Federal Aviation Administration (FAA).

At bid opening, 14 bids were received with Parker submitting the low bid. However, it was discovered shortly after bid opening that Parker's bid did not include the required bid bond, and the contracting officer notified Parker that its bid had been rejected. Parker protested to the FAA and subsequent to a denial by that agency filed a timely protest with our Office.

Parker's bid package was hand-carried to the bid opening room prior to the time set for opening. Because Parker had indicated on page four of the IFB that a bid bond was enclosed, the bid opening officer announced that a bid bond was included with Parker's bid. The bid opening officer, however, states that at no time did she see Parker's bid bond.

Shortly after bid opening, the contract specialist discovered that a bid bond had not been included with Parker's bid. The record shows that the contract specialist carefully retraced his steps to insure that the bond had not

been misplaced. In addition, he thoroughly searched the 14 bid packages to determine whether Parker's bid bond had been placed with another bid package. No bid bond was found.

By affidavits of employees of Parker and the surety company, Parker attempts to show that a bid bond was issued by the surety company and inserted into the bid envelope. Specifically, an affidavit of the employee who delivered the Parker bid at bid opening indicates that a bid bond was in the bid envelope, that all bid documents were reviewed at bid opening, and that the bid documents were placed aside on a table. However as indicated above, the bid opening officer did not actually see the bid bond and all efforts to locate the bond were unsuccessful.

Beginning with our decision at 38 Comp. Gen. 532 (1959) we have consistently held that a bid bond requirement must be considered a material part of the IFB and that a contracting officer cannot waive the failure to comply with this requirement.

Parker cites our decision in 40 Comp. Gen. 469 (1961). In that case a bid bond was inadvertently misplaced by the low bidder on a desk in the Army Area Engineer's office shortly before bid opening. We held that the defect could be cured because for all practical purposes the bid was accompanied by a bond as required and this fact was established by evidence independent of that furnished by the bidder. Parker asserts that it has complied with the above rule which, as indicated in our decision of S. Puma and Company, Incorporated, B-182936, April 17, 1975, 75-1 CPD 230, is specifically limited to the situation in which evidence independent of that provided by the bidder establishes that a proper bid bond was acquired in time for submission with a bid and for all practical purposes was submitted with the bid.

Parker argues that this is not a situation involving an inadvertent error, but a case where the agency has lost the bid bond, and asserts that it is impossible for it to establish by independent evidence how the agency misplaced the bid bond. The protester contends that in view of the announcement at the bid opening that its bid

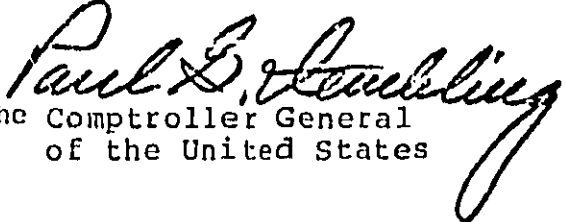
package was complete, we should assume that the Government lost the bid bond. Parker states that insofar as is applicable here, it has complied with the rule of Puma, supra, by furnishing evidence independent of that provided by the bidder (the affidavit of an employee of the surety company) which shows that a bid bond was issued.

The focus of the decisions which allow deviations from the bid bond requirement is that there must be independent affirmative evidence that the bid bond was out of control of the bidder and in the hands of the Government prior to opening. See Puma, supra. In our opinion, the fact that the bid opening officer announced at the bid opening that Parker's bid package was complete does not conclusively establish that the Government lost the bond because the evidence shows that this officer observed that the bidder had indicated in its bid that a bond was included and did not actually observe whether the bond was included. Moreover, a thorough search minutes after the bid opening did not produce a bond. Thus the record indicates that the bond was not misplaced by the Government. Therefore, we believe the burden is on Parker to establish by independent evidence that the required bond was submitted with its bid.

The only evidence furnished by Parker is that of its own employees and the attorney-in-fact of the surety company. The evidence furnished by an employee of the firm is self-serving in nature and unacceptable. Furthermore, the surety has a substantial interest in this procurement and therefore evidence submitted by it cannot be considered independent within the purview of our holding in 40 Comp. Gen., supra.

Since it cannot be established through independent evidence that a bid bond was out of control of the bidder and in the hands of the Government prior to bid opening, the rejection of Parker's bid as nonresponsive was proper.

Accordingly, the protest is denied.

  
For the Comptroller General  
of the United States